

Short Title: Modernize Partition Laws/Elective Life Estate.

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE STATUTES ON PARTITION OF PROPERTY AND TO
MAKE FURTHER TECHNICAL, CONFORMING, AND MODERNIZING
AMENDMENTS TO THE ELECTIVE LIFE ESTATE STATUTE.

The General Assembly of North Carolina enacts:

PART I. RECODIFY AND MODERNIZE PARTITION OF PROPERTY STATUTES

[Staff Note: Staff has italicized G.S. sections that have been amended or enacted in drafts previously approved by the Commission. Highlighting in these italicized sections represents deviations from the approved drafts. Highlighting in non-italicized sections represents places where staff is particularly uncertain.]

SECTION 1.(a) *[Staff Note: Staff will include the recodification instructions in a later draft. Below is a recodification table for reference.]*

Structure of New Chapter and Recodification Table

The new Chapter 46A of the General Statutes is entitled "Partition" and has the following structure:

- Article 1. General Provisions.
- Article 2. Partition of Real Property.
 - Part 1. General Provisions.
 - Part 2. Actual Partition.
 - Part 3. Partition Sale.
- Article 3. Partition of Personal Property.

<u>Former G.S. Section:</u>	<u>Recodified G.S. Section:</u>
Article 1:	Article 1:
G.S. 46-1.....	G.S. 46A-1
	Article 2:
	Part 1:
G.S. 46-2.....	G.S. 46A-20
	Article 1:
G.S. 46-2.1	G.S. 46A-2
	Article 2:
	Part 1:
G.S. 46-3.....	G.S. 46A-21
G.S. 46-3.1.....	G.S. 46A-25
G.S. 46-4.....	G.S. 46A-22
G.S. 46-5.....	G.S. 46A-23

1	G.S. 46-6.....	G.S. 46A-24
2		Part 2:
3	G.S. 46-7.....	G.S. 46A-50(a)
4	G.S. 46-7.1.....	G.S. 46A-50(b)
5	G.S. 46-8.....	G.S. 46A-50(c)
6	G.S. 46-9.....	G.S. 46A-50(d)
7	G.S. 46-10.....	G.S. 46A-51(a)
8	G.S. 46-11.....	G.S. 46A-51(b)
9	G.S. 46-12.....	G.S. 46A-51(c)
10	G.S. 46-13.....	G.S. 46A-52
11	G.S. 46-14.....	G.S. 46A-53
12		Part 1:
13	G.S. 46-16.....	G.S. 46A-27
14		Part 2:
15	G.S. 46-17.....	G.S. 46A-54(a)
16	G.S. 46-17.1.....	G.S. 46A-55
17	G.S. 46-18.....	G.S. 46A-54(b)
18	G.S. 46-19.....	G.S. 46A-56
19	G.S. 46-20.....	G.S. 46A-57
20	G.S. 46-21.....	G.S. 46A-58
21	Article 2:	Part 3:
22	G.S. 46-22.....	G.S. 46A-75
23	G.S. 46-22.1.....	G.S. 46A-76
24	G.S. 46-23.....	G.S. 46A-78
25	G.S. 46-24.....	G.S. 46A-77
26	G.S. 46-25.....	G.S. 46A-79
27	G.S. 46-26.....	G.S. 46A-80
28	G.S. 46-27.....	G.S. 46A-81
29	G.S. 46-28.....	G.S. 46A-100(a), (b), (c)
30	G.S. 46-28.1.....	G.S. 46A-101
31	G.S. 46-28.2.....	G.S. 46A-102(a)
32	G.S. 46-30.....	G.S. 46A-102(b)
33	G.S. 46-31.....	G.S. 46A-100(d)
34	G.S. 46-33.....	G.S. 46A-102(c)
35		Article 1:
36	G.S. 46-34.....	G.S. 46A-4
37	Article 4:	Article 3:
38	G.S. 46-42.....	G.S. 46A-150
39	G.S. 46-43.....	G.S. 46A-151(b)
40	G.S. 46-43.1.....	G.S. 46A-151(c)
41	G.S. 46-44.....	G.S. 46A-152

[Staff Note: In the Partition/Recodify Notice Provision First draft, the Commission approved the recodification of G.S. 46-2.1(b) as G.S. 46-3(b), which this draft further recodifies as G.S. 46A-21(b). This draft, however, deviates from this treatment, because G.S. 46-2.1(b) appears to belong with the provisions governing both real property and personal property partitions in Article 1, whereas G.S. 46-3 appears to belong with the provisions governing only real property partitions in Article 2.]

SECTION 1.(b) Chapter 46A of the General Statutes, as enacted by subsection (a)

of this section, reads as rewritten:

"Chapter 46A.

"Partition.

"Article 1.

"General Provisions.

"§ 46A-1. Partition is a special proceeding.

~~Partition~~ A partition of property under this Chapter shall be by is a special proceeding, and the procedure shall be the same in all respects as prescribed by law in special proceedings, except as modified herein, except as modified in this Chapter, its procedure is provided in Subchapter XII of Chapter 1 of the General Statutes.

"§ 46A-2. ~~Summons.~~ Summons; notice included in petition.

(a) *In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.*

(b) *Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:*

(1) *That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.*

(2) *That pursuant to ~~G.S. 6-21~~ G.S. 46A-3, the court has the ~~authority, in its discretion,~~ authority to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding.*

"§ 46A-3. Attorneys' fees.

(a) In proceedings to partition property under this Chapter, the court shall allocate among all the cotenants of the property those reasonable attorneys' fees incurred for the common

benefit of all the cotenants, unless a cotenant shows by clear and convincing evidence that doing so would be inequitable. The allocation shall be according to each cotenant's interest in the property.

(b) The attorneys' fees described in subsection (a) of this section do not include attorneys' fees incurred in disputing which method of partition the court should order. Reasonable attorneys' fees incurred by a cotenant in disputing the method of partition shall be allocated by the court among those cotenants determined by the court to be aligned with the cotenant on that issue. The allocation shall be according to each aligned cotenant's interest in the property relative to the total interest of all the aligned cotenants in the property.

"§ 46A-4. ~~Shares to persons unknown or not sui juris secured.~~ Proceeds of party that is a minor, incompetent, imprisoned, or outside the State, or of unknown cotenant.

~~When a sale is made under this Chapter, and any party to the proceedings be an infant, non compos mentis, is a minor, incompetent, imprisoned, or beyond the limits of outside the State, or when the name of any tenant-in-common cotenant is not known, it is the duty of the court to shall decree the share of such party, in the proceeds of sale, to be so invested or settled that the same may be secured to such party or his real representative. order the party's share of the proceeds to be invested or deposited under Article 12 of Chapter 7A of the General Statutes, so that the party may later recover the proceeds.~~

"Article 2.

"Partition of Real Property.

"Part 1.

"General Provisions.

"§ 46A-20. Venue in partition.

~~The proceeding for partition, actual or by sale, must be instituted in the county where the land or some part thereof lies. If the land to be partitioned consists of one tract lying in more than one~~

1 ~~county, or consists of several tracts lying in different counties, proceedings may be instituted in~~
2 ~~either of the counties in which a part of the land is situated, and the court of such county wherein~~
3 ~~the proceedings for partition are first brought shall have jurisdiction to proceed to a final~~
4 ~~disposition of said proceedings, to the same extent as if all of said land was situate in the county~~
5 ~~where the proceedings were instituted.~~ A proceeding to partition real property, whether by actual
6 partition or by partition sale, shall be commenced in the county where the property is located. If
7 the property, whether consisting of one or more tracts, is located in more than one county, the
8 proceeding may be commenced in any of the counties where any part of the property is located.

9 **"§ 46A-21. Petition by cotenant or personal representative of ~~cotenant~~cotenant; ~~no~~**
10 **requirement to serve or join spouses of cotenants; life tenant may join.**

11 (a) ~~One or more persons claiming real estate property as joint tenants or tenants in~~
12 ~~common or joint tenants or the personal representative of a decedent joint tenant, or tenant in~~
13 ~~common, when sale of such decedent's real property to make assets is alleged and shown as~~
14 ~~required by G.S. 28A-17-3, may have partition by petition to~~ may petition to partition the
15 property in the superior court. The personal representative of a deceased tenant in common or
16 deceased joint tenant may also petition to partition the property in superior court when the sale
17 of the deceased cotenant's interest to make assets is alleged and shown as required by
18 G.S. 28A-17-3.

19 (b) A petitioner is not required to serve or join spouses of cotenants of the real property.
20 The surviving spouse of a deceased cotenant is not entitled to a life estate in real property under
21 G.S. 29-30 if the cotenant's interest in the real property was transferred to another person before
22 the cotenant's death in a partition proceeding initiated under this Chapter.

23 (c) If the real property to be partitioned is subject to a life estate, the life tenant may join
24 in the proceeding.

[Staff Note: In a staff note to the Partition/Recodify Notice Provision First Draft, staff proposed that the language in subsection (b) be added to this section. The Commission approved this proposal.]

[Staff Note: Subsection (c) sets out the substance of the first part of the first sentence of G.S. 46-24, which this draft recodifies as G.S. 46A-77.]

"§ 46A-22. Surface and minerals in separate owners; partitions distinct.

~~When the title to the mineral interests in any land has become separated from the surface in ownership, the tenants in common or joint tenants of such mineral interests may have partition of the same, distinct from the surface, and without joining as parties the owner or owners of the surface; and the tenants in common or joint tenants of the surface may have partition of the same, in manner provided by law, distinct from the mineral interest and without joining as parties the owner or owners of the mineral interest. In all instances where the mineral interests and surface interest have thus become separated in ownership, the owner or owners of the mineral interests shall not be compelled to join in a partition of the surface interests, nor shall the owner or owners of the surface interest be compelled to join in a partition of the mineral interest, nor shall the rights of either owner be prejudiced by a partition of the other interests.~~When title to the mineral interests in real property has been separated in ownership from the title to the surface of the property, a tenant in common or joint tenant of the mineral interests may partition the mineral interests, distinct from the surface, without joining the owner of the surface. Similarly, a tenant in common or joint tenant of the surface of the property may partition the surface, distinct from the mineral interests, without joining the owner of the mineral interests. An owner of the mineral interests is not required to join a partition of the surface of the property, and an owner of the surface of the property is not required to join a partition of the mineral interests. The rights of either owner shall not be prejudiced by a partition of the other interests.

"§ 46A-23. Petition by judgment creditor of ~~e~~tenant; assignment of homestead.ctenant.

~~When any person owns a judgment duly docketed in the superior court of a county wherein the judgment debtor owns an undivided interest in fee in land as a tenant in common, or joint~~

~~tenant, and the judgment creditor desires to lay off the homestead of the judgment debtor in the~~
~~land and sell the excess, if any, to satisfy his judgment, the judgment creditor may institute before~~
~~the clerk of the court of the county wherein the land lies a special proceeding for partition of the~~
~~land between the tenants in common, making the judgment debtor, the other tenants in common~~
~~and all other interested persons parties to the proceeding by summons. The proceeding shall then~~
~~be in all other respects conducted as other special proceedings for the partition of land between~~
~~tenants in common. Upon the actual partition of the land the judgment creditor may sue out~~
~~execution on his judgment, as allowed by law, and have the homestead of the judgment debtor~~
~~allotted to him and sell the excess, as in other cases where the homestead is allotted under~~
~~execution. The remedy provided for in this section shall not deprive the judgment creditor of any~~
~~other remedy in law or in equity which he may have for the enforcement of his judgment lien.~~If
a judgment debtor has a personal liability on a judgment docketed in the superior court of a
county where the judgment debtor owns real property as a tenant in common or joint tenant, the
judgment creditor may petition for an actual partition of the property. The judgment creditor shall
serve and join the judgment debtor, the other cotenants of the real property, and all other
interested persons. If the court apportions a share of the property to the judgment debtor, the
judgment creditor may seek to execute the judgment against the judgment debtor's share by (i)
setting aside the judgment debtor's homestead in the share, as determined according to Article X
of the North Carolina Constitution and Article 16 of Chapter 1C of the General Statutes, and (ii)
selling the remaining part of the share. The remedy provided in this section does not deprive a
judgment creditor of any other remedy in law or equity to enforce a judgment lien [or the
judgment debtor of the homestead protections of Article X of the North Carolina Constitution
and the exempt property protections of Article 16 of Chapter 1C of the General Statutes.]

"§ 46A-24. Unknown or unlocatable parties; summons, notice, and representation.

(a) ~~If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. If, upon the filing of the petition, the petitioner shows by affidavit or otherwise that the petitioner cannot after due diligence ascertain the name or location of a person interested in the real property to be partitioned, the court shall order that the petitioner give notice to the person by publishing the petition, or the substance of the petition, with the court order in one or more newspapers designated in the order.~~ The notice by publication shall include a description of the property ~~which that~~ includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) Before or after ~~such general~~ the notice by publication if ~~any person interested in the premises and entitled to notice fails to appear, publication,~~ the court shall appoint ~~some a~~ disinterested person to represent ~~the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented.~~ any interested person that is unknown or unlocatable and that fails to appear.

"§ 46A-25. Court's authority to make orders pending final determination of proceeding-proceeding; notice and hearing.

(a) Pending final determination of the proceeding, on application of any of the parties in a proceeding to partition ~~land,~~ real property, the court may make such orders as it considers to be in the best interest of the parties, including but not limited to orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, ~~and to include~~ the appointment of receivers pursuant to ~~G.S. 1-502(6).~~ G.S. 1-502(6), and access to the property for the purpose of inspecting, surveying, appraising, or selling the property.

(b) A party making an application under subsection (a) of this section shall serve a copy of the application. If, within 10 days of being served, a party files a response in opposition to the application or requests a hearing, the court shall schedule a hearing on the application.

"§ 46A-26. Carrying costs, including property taxes; improvements; right to contribution.

(a) Right to Contribution. – At any time during a real property partition proceeding, a cotenant may on application assert the cotenant's right to contribution provided in this section. A cotenant has a right to contribution from the other cotenants for the cotenant's payment of the real property's carrying costs and for the lesser of the following:

(1) The value added to the real property by the cotenant's improvements as of the date of the commencement of the proceeding.

(2) The actual costs of the cotenant's improvements.

(b) Property Taxes. – A cotenant's right to contribution for property taxes under this section is limited to the amount of property taxes paid by the cotenant during the 10 years preceding the filing of the partition petition, plus interest at the legal rate under G.S. 24-1.

(c) Scope. – Nothing in this section affects the rights of cotenants outside a real property partition proceeding initiated under this Chapter.

(d) Carrying Costs Defined. – For purposes of this section, "carrying costs" means the actual costs of preserving the value of and the cotenants' interests in the real property, including property taxes, homeowner's insurance, repairs, and payments for a loan to acquire the real property.

"§ 46A-27. ~~Partial partition; balance sold or left in common.~~ Partition of part of the real property.

~~In all proceedings under this Chapter actual partition may be made of a part of the land sought to be partitioned and a sale of the remainder; or a part only of any land held by tenants in common, or joint tenants, may be partitioned and the remainder held in cotenancy.~~
The court may order the

actual partition of part of the real property and order that the remaining part of the property be
sold in a partition sale or held in cotenancy.

"Part 2.

"Actual Partition.

"§ 46A-50. Commissioners ~~appointed~~appointed; compensation; oath; delay or neglect.

(a) Appointment. – The superior court shall appoint three disinterested commissioners to
~~divide and apportion such the real estate, property, or so much thereof of the property as the court~~
~~may deem~~ deems best, among the ~~several tenants in common, or joint tenants. Provided, in cases~~
~~where cotenants. If the land property to be partitioned lies in more than one county, then the court~~
may appoint ~~such any~~ additional commissioners as it ~~may deem~~ finds necessary from counties
where the ~~land property~~ lies other than the county where the proceedings are instituted.

(b) Compensation. – The clerk of the superior court shall fix the compensation of
commissioners for the partition ~~or division of lands of real property~~ according to the provisions
~~of~~ G.S. 1-408.

(c) Oath. – ~~The~~ Pursuant to Chapter 11 of the General Statutes, the commissioners shall
be sworn by a magistrate, the sheriff or any deputy sheriff of the county, or any other person
authorized to administer oaths, to do justice among the ~~tenants in common in cotenants with~~
respect to ~~such the~~ partition, according to their best skill and ability.

(d) Delay or Neglect. – If, after ~~accepting taking the trust, commission,~~ any of the
commissioners unreasonably delay or neglect to execute the ~~same, partition, every such~~
~~delinquent commissioner shall be liable for contempt and may be removed, and shall be further~~
~~liable to a penalty of fifty dollars (\$50.00), to be recovered by the petitioner. the court may do any~~
of the following:

(1) Find the commissioner in civil contempt.

(2) Remove the commissioner.

(3) Assess a civil penalty of fifty dollars (\$50.00), to be remitted to the Civil
Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

**"§ 46A-51. Commissioners to meet and ~~make partition; equalizing shares; partition real
property; apportioning shares; owelty to bear interest; owelty from minor's
share.~~**

(a) Apportioning Shares; Owelty. – The commissioners, who shall be summoned by the
sheriff, must ~~The sheriff shall summon the commissioners to meet on the premises real property.
and The commissioners shall partition the same the property among the tenants in common, or
joint tenants, cotenants, according to their respective rights and interests therein, by dividing the
land into equal shares in point of value as nearly as possible, by apportioning it into shares
proportionate in value as nearly as possible to the cotenants' interests in the property. and for this
purpose they are empowered to~~ When partitioning property under this section, the commissioners
may subdivide apportion the more valuable tracts as they may deem best, best and to may charge
the more valuable dividends shares with such sums of money as they may think deem necessary,
to be paid to the dividends shares of inferior value, value in order to make an equitable partition.

(b) Interest on Owelty. – The sums of money due from the more valuable dividends
shares shall bear interest at the legal rate under G.S. 24-1 until paid.

(c) Minor's Share. – When a minor to whom a more valuable dividend shall fall is charged
with the payment of any sum, the money shall not be payable until such minor arrives at the age
of 18 years, but the general guardian, if there be one, must pay such sum whenever assets shall
come into his hands, and in case the general guardian has assets which he did not so apply, he
shall pay out of his own proper estate any interest that may have accrued in consequence of such
failure. If a share charged with a sum of money under this section is apportioned to a minor, the
money shall not be payable until the minor reaches the age of 18 years. If the minor has a general
guardian or guardian of the estate, however, the guardian shall pay the sum when the guardian

receives assets belonging to the minor, other than the share, that may be used for that purpose. If the guardian fails to comply with this subsection, the guardian shall be liable for any interest that accrued due to the failure.

[Staff Note: Some of the amendments in this section are taken from the Partition of Property Third Draft (DN 13-2 Partition of Property).]

[Staff Note: Staff asks whether this section should address the issue of owelty from the share of an incompetent adult.]

"§ 46A-52. Partition where ~~shareowners~~ cotenants unknown or title disputed; ~~allotment~~ apportionment of shares in common.

(a) If there are any of the ~~tenants in common, or joint tenants,~~ cotenants whose names are not known or whose title is in dispute, the ~~share or shares of such persons~~ the cotenants shall be set off apportioned together as one parcel. If, in any partition proceeding, two or more cotenants appear as ~~defendants~~ respondents claiming the same share of particular undivided interest in the ~~premises real property~~ to be ~~divided, partitioned,~~ or if any part of the ~~share~~ undivided interest claimed by the petitioner is disputed by any ~~defendant or defendants,~~ respondent, it shall not be necessary to decide on their respective claims before the court ~~shall order the partition or sale to be made, but the partition or sale shall be made, and the~~ orders an actual partition or partition sale of the property. The controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding.

(b) If two or more ~~tenants in common, or joint tenants,~~ cotenants by petition or ~~answer,~~ answer request it, the commissioners may, by order of the court, ~~allot~~ apportion their several shares to them in common, as one parcel, ~~provided such~~ so long as the ~~division shall not be~~ apportionment is not injurious or detrimental to any ~~eotenant or joint tenant,~~ cotenant.

"§ 46A-53. Judgments in partition of remainders binding on parties ~~thereto~~ to the proceeding.

Where ~~land~~ real property is conveyed by deed, or devised by will, upon contingent remainder, executory devise, or other limitation, any judgment of partition rendered ~~in an action or special proceeding in the superior court authorizing a division or partition of said lands, and to which the life tenant or tenants, and all other persons then in being, or not in being, take such land as if the contingency had then happened, are parties, and those unborn being duly represented by guardian ad litem, such judgment of partition authorizing division or partition of said lands among the respective tenants and remaindermen or executory devisees, will be~~ is valid and binding upon all parties ~~thereto~~ to the proceeding and upon all other persons not then in ~~being~~ being, if all of the following requirements are met:

(1) All persons, whether or not in being, with an interest in the property are parties to the proceeding.

(2) Persons with an interest in the property who are not in being are represented by a guardian ad litem.

[Staff Note: This draft deletes "action", because property can be partitioned only in a partition proceeding under this Chapter.]

"§ 46A-54. Report of commissioners; contents; ~~filing~~ filing; extension; map.

(a) Report. – The ~~commissioners, within a reasonable time, not exceeding~~ commissioners shall file a report of their proceedings in the office of the clerk of superior court within 90 days after the last commissioner receives notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing the appointment. The report shall be signed by at least two commissioners and shall describe particularly the ~~land~~ real property or parcels of ~~land~~ real property divided, apportioned, and the share allotted apportioned to each ~~tenant~~ cotenant in severalty, with the sum or sums charged on the more valuable ~~dividends~~ shares to be paid to ~~those~~ the shares of inferior value. ~~The report shall be filed in the office of the superior court clerk.~~ Provided, that the The clerk of the superior court may, in the clerk's discretion, for good cause

shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property.

(b) Map. — The commissioners are authorized to may employ the county surveyor or, in his absence or if he be connected with the parties, if the county surveyor is absent or not disinterested, some other surveyor, who shall make out a map of the premises real property showing the quantity, ~~courses~~ courses, and distances of each ~~share, which share.~~ share. The map shall accompany and form a part of the report of the commissioners.

[Staff Note: Some of the amendments in this section are taken from the Partition of Property Third Draft (DN 13-2 Partition of Property).]

"§ 46A-55. Dedication of streets.

Upon motion of any party or the commissioners appointed to make ~~division,~~ the partition, the clerk may authorize the commissioners to propose and report the dedication of ~~such~~ portions of the ~~land~~ real property as ~~that~~ are necessary as a means of access to any ~~share, or is share or that~~ are otherwise advisable for public or private highways, ~~streets streets, or alleys, and such alleys.~~ This proposal shall be acted upon by the clerk as a part of the report and, if approved, approved by the clerk, shall constitute a dedication. ~~No interest of a minor or other person under disability shall be affected thereby until such dedication is approved by a judge of the superior court. Only~~ a dedication approved by a judge of the superior court affects the interest of a minor or other person under disability.

"§ 46A-56. Confirmation and impeachment of ~~report~~ report; appeal.

(a) If no exception to the report of the commissioners is filed within 10 days, the ~~same~~ report shall be confirmed. ~~Any party after confirmation may impeach the proceedings and decrees for mistake, fraud or collusion by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.~~

(b) If an exception to the report of commissioners is filed, the clerk shall do one of the following:

(1) Confirm the ~~report~~; report.

(2) Recommit the report for correction or further ~~consideration~~; consideration.

(3) Vacate the report and direct a reappraisal by the same ~~commissioners~~; or commissioners.

(4) Vacate the report, discharge the commissioners, and appoint new commissioners to view the ~~premises~~ real property and ~~make a partition of them~~ it.

(c) Appeal from the clerk to superior court of an order of confirmation of the report of commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions specified in subsection (b) of this section and may not adjudge a partition of the ~~land~~ property different from that made by the commissioners.

(d) After confirmation of the report, any party may impeach the proceedings and decrees for mistake, fraud, or collusion by a motion in the cause. Impeachment, however, does not affect an innocent purchaser for full value and without notice.

"§ 46A-57. Report and confirmation enrolled and registered; effect; probate.

~~Such report, The report of the commissioners when confirmed, together with and the decree of confirmation, confirmation~~ shall be enrolled and certified to the register of deeds and registered in the office of the county where ~~such real estate is situated, and the real property is located.~~ The confirmed report shall be binding among and between the ~~claimants, their parties and the parties'~~ heirs and assigns. It ~~shall not be~~ is not necessary for the clerk of court to probate the certified papers required to be registered by this section.

"§ 46A-58. Clerk to docket owelty charges; no release of ~~land~~ real property and no lien.

~~In case If~~ owelty of partition is charged in favor of certain parts of said land shares of the real
property and against certain other parts, shares, the clerk shall enter on the judgment docket the
~~said~~ owelty charges in like the same manner as judgments are entered on said the docket, persons
to whom ~~parts shares~~ are allotted apportioned in favor of which owelty is charged being marked
plaintiffs on the judgment docket, and persons to whom ~~parts shares~~ are allotted apportioned
against which owelty is charged being marked defendants on ~~said the docket; said docket.~~ The
entry on ~~said the~~ docket shall contain the title of the special proceeding in which the land property
was ~~partitioned, partitioned~~ and shall refer to the book and page in which the ~~said~~ special
proceeding is ~~recorded; when said recorded.~~ When the owelty charges are paid said paid, the
entry upon the judgment docket shall be marked satisfied in ~~like the same~~ manner as judgments
are cancelled and marked ~~satisfied; satisfied,~~ and the clerk shall be entitled to the same fees for
entering ~~such the~~ judgment of owelty as he the clerk is entitled to for docketing other judgments;
~~Provided, that the judgments.~~ The docketing of said owelty charges as hereinbefore set out shall
~~not have the effect of releasing under this section does not release the land property from the~~
owelty charged in ~~said the~~ special proceeding; Provided, any proceeding. Any judgment docketed
under this section ~~shall not be~~ is not a lien on any ~~property whatever, except that property, except~~
the property upon which said the owelty is made a specific charge.

"§ 46A-59. Order for possession.

(a) An order for possession of real property apportioned pursuant to this Part, in favor
of the party to which an apportionment has been made and against any party in possession at
the time of application therefor, may be issued by the clerk of the superior court if all of the
following apply:

- (1) No appeal from the order of confirmation of the report of commissioners has
been made within the time prescribed under G.S. 1-301.2, or if an appeal has
been made, the judge confirmed the report pursuant to G.S. 46A-56(c).

(2) The report and confirmation have been duly recorded in the office of the register of deeds pursuant to G.S. 46A-57.

(3) Ten days' notice has been given by the party applying for the order for possession to the party or parties who remain in possession at the time application is made. The notice shall not be given until the clerk has confirmed the report of the commissioners pursuant to G.S. 46A-56.

(b) An order for possession issued pursuant to this section shall be directed to the sheriff and shall authorize the sheriff to remove all occupants and their personal property from the real property and to put the party to which an apportionment has been made in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. The party to which an apportionment has been made has the same rights and remedies in connection with the execution of an order for possession and the disposition of personal property following execution as are provided to a landlord under State law, including Chapters 42 and 44A of the General Statutes.

[Staff Note: This draft deviates from the Orders for Poss. in Real Property Partitions First Draft, approved by the Commission, by (i) using the term "apportioned" to be consistent throughout the Chapter when referencing actual partitions and (ii) by referencing "this Part" since this Part consists of the statutes on actual partition.]

"Part 3.

"Partition Sale.

"§ 46A-75. Sale in lieu of partition.

(a) Subject to ~~G.S. 46-22.1(b)~~, G.S. 46A-76(b), the court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the ~~lands~~ real property cannot be made without substantial injury to any of the interested parties, after having considered evidence in favor of actual partition and evidence in favor of a sale presented by any of the interested parties.

(b) In determining whether an actual partition would cause ~~"substantial injury"~~
substantial injury to any of the interested parties, the court shall consider all of the following:

(1) Whether the fair market value of each cotenant's share in an actual partition
of the property would be materially less than the amount each cotenant would
receive from the sale of the whole.

(2) Whether an actual partition would result in material impairment of any
cotenant's rights.

~~(b)(1)(c)~~ (c) The court, in its discretion, shall consider whether the remedy of owelty ~~where such~~
~~remedy~~ can aid in making an actual partition occur without substantial injury to ~~the~~ any of the
interested parties.

~~(c)(d)~~ (d) ~~The~~ If the court orders a partition sale, the court shall make specific findings of fact
and conclusions of law supporting ~~an order of sale of the property~~ the order.

~~(d)(e)~~ (e) The party seeking a sale of the property ~~shall have~~ has the burden of proving
substantial injury under ~~the provisions of~~ this section.

"§ 46A-76. Mediation.

(a) ~~Persons~~ Parties interested in the ~~premises~~ real property may agree at ~~anytime~~ any time
to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission
may be obtained from the clerk or from the Commission through the Administrative Office of
the Courts.

(b) When a partition sale is requested, the court or the clerk may order mediation before
considering whether to order a sale. ~~The provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall~~
~~apply~~ apply to a mediation under this section.

**"§ 46A-77. ~~Life tenant as party; valuation of life estate.~~ Partition sale of real property
subject to a life estate.**

1 ~~In all proceedings for partition of land whereon there is a life estate, If the real property to be~~
2 ~~partitioned is subject to a life estate, the life tenant may join in the proceeding and on a sale~~
3 ~~proceeding, and in the case of a partition sale, the interest on the value of the share of the life~~
4 ~~tenant shall be received and paid to such the life tenant annually; or in annually. In lieu of such~~
5 ~~annual interest, the value of such the life tenant's share during the probable life of such life tenant~~
6 ~~shall be ascertained~~ calculated according to a mortality table approved by the Commissioner of
7 Insurance and paid out of the proceeds to ~~such the~~ life tenant absolutely.

8 *[Staff Note: This draft sets out the substance of the first part of the first sentence of this section*
9 *as a new subsection (c) to G.S. 46A-21, which this draft recodifies from G.S. 46-3.]*
10

11 **"§ 46A-78. Remainder or reversion sold for partition; outstanding life estate. Partition sale**
12 **of remainder or reversionary interest of real property.**

13 The existence of a life estate in ~~any land real property~~ shall not be a bar to a sale for partition
14 ~~of the remainder or reversion thereof, does not bar a partition sale of the remainder or~~
15 ~~reversionary interest of the property, and for the purposes of partition the tenants in common or~~
16 ~~joint tenants of the remainder or reversionary interest shall be deemed seized and possessed to~~
17 ~~possess the property as if no life estate existed. But this shall not~~ The partition shall not, however,
18 interfere with the possession of the life tenant during the existence of his the life tenant's estate.

19 **"§ 46A-79. Sale of standing timber on partition; timber; valuation of life estate.**

20 (a) ~~When two or more persons own, as tenants in common, joint tenants or copartners, a~~
21 ~~tract of land, either in possession, or in remainder or reversion, subject to a life estate, or where~~
22 ~~one or more persons own a remainder or reversionary interest in a tract of land, subject to a life~~
23 ~~estate, then in any such case in which there is standing timber upon any such land, a sale of said~~
24 ~~timber trees, separate from the land, may be had upon the petition of one or more of said owners,~~
25 ~~or the life tenant, for partition among the owners thereof, including the life tenant, upon such~~
26 ~~terms as the court may order, and under like proceedings as are now prescribed by law for the~~
27 ~~sale of land for partition: Provided, that when the land is subject to a life estate, the life tenant~~

1 ~~shall be made a party to the proceedings, and shall be entitled to receive his or her portion of the~~
2 ~~net proceeds of sales, to be ascertained under the mortality tables established by law: Provided~~
3 ~~further, that prior to a judgment allowing a life tenant to sell the timber there must be a finding~~
4 ~~that the cutting is in keeping with good husbandry and that no substantial injury will be done to~~
5 ~~the remainder interest.~~When two or more persons own real property with standing timber, as
6 tenants in common, joint tenants, or partners, one or more of the persons may seek a partition
7 sale of the timber, separate from the real property.

8 (b) If real property with standing timber is subject to a life estate, an owner of the
9 remainder or reversionary interest, whether as a tenant in common, joint tenant, partner, or sole
10 owner, or the life tenant may seek a partition sale of the timber, separate from the real property.
11 The life tenant shall be made a party to the proceeding and is entitled to receive the life tenant's
12 share of the proceeds, to be calculated according to a mortality table approved by the
13 Commissioner of Insurance.

14 (c) An order allowing a life tenant to sell standing timber requires a finding that the
15 cutting of the timber is in keeping with good husbandry and that no substantial injury will be
16 done to the remainder or reversionary interest.

17 *[Staff Note: According to Black's Law Dictionary, Tenth Edition, "copartner" means "partner".]*

18 **"§ 46A-80. Sale of mineral ~~interests on partition~~interests.**

19 ~~In case of the a partition of mineral interests, in all instances where it is made to appear to the~~
20 mineral interests of real property, when the court determines any of the following, that it would
21 ~~be for the best interests of the tenants in common, or joint tenants, of such interests to have the~~
22 ~~same sold, or if actual partition of the same cannot be had without injury to some or all of such~~
23 ~~tenants (in common), then it is lawful for and the duty of the court to shall order a sale of such~~
24 the mineral interests and a division of allocate the proceeds as the according to the interests of
25 the parties may appear tenants in common or joint tenants:

(1) It is in the best interest of the cotenants of the mineral interests to sell the interests.

(2) Actual partition of the mineral interests would cause injury to some or all of the cotenants of the mineral interests.

"§ 46A-81. Sale of ~~land~~ real property required for public use on cotenant's petition.

When the ~~lands~~ real property of ~~joint tenants or tenants in common or joint tenants~~ are is required for public purposes, one or more ~~of such tenants, or their guardian for them,~~ cotenants, or the cotenant's guardian, may file a petition verified by ~~oath,~~ oath in the superior court of the county where the ~~lands or any part of them lie,~~ property or any part of the property is located, setting forth ~~therein in the petition~~ that the lands are property is required for public purposes, and that their the cotenants' interests would be promoted by a sale thereof of the property. Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of ~~such lands, the property,~~ or so much thereof of the property as may be necessary. ~~The expenses, fees and costs of this proceeding shall be paid in the discretion of the court.~~ Attorneys' fees shall be assessed in accordance with G.S. 46A-3. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B. Other costs and expenses shall be assessed in accordance with G.S. 6-21.

"§ 46A-100. Sale procedure.

(a) The procedure for a partition sale shall be is the same as is provided in Article 29A of Chapter 1 of the General Statutes, except as provided herein in this section. In a partition sale, the court is not required to appoint more than one commissioner.

(b) ~~The commissioners~~ In the case of a public sale, the commissioner shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners commissioner shall also certify to

1 the court that at least ten days prior to any resale pursuant to ~~G.S. 46-28.1(e)~~ G.S. 46A-101(f) a
2 copy of the notice of resale was sent by first class mail to the last known address of all parties to
3 the partition proceeding who have filed a written request with the court that they be given notice
4 of any resale. An affidavit from the ~~commissioners~~ commissioner that copies of the notice of sale
5 and resale were mailed to all parties entitled to notice in accordance with this section ~~shall~~
6 ~~satisfy~~ satisfies the certification requirement and shall also be deemed prima facie true. If after
7 hearing it is proven that a party seeking to revoke the order of confirmation of a sale or
8 subsequent resale was mailed notice as required by this section prior to the date of the sale or
9 subsequent resale, ~~then~~ that party shall not prevail under the provisions of ~~G.S. 46-28.1(a)(2)a.~~
10 ~~and b.~~ G.S. 46A-101(a)(2)a. or b.

11 (c) Any cotenant who enters the high bid or offer at any sale of one hundred percent
12 (100%) of the undivided interests in any parcel of real property shall receive a credit for the
13 undivided interest the cotenant already owns ~~therein~~ in the real property and shall receive a
14 corresponding reduction in the amount of the total purchase price owed after deducting the costs
15 and fees associated with the sale and ~~apportioning~~ allocating the costs and fees associated with
16 the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred
17 percent (100%) of the undivided interests in the parcel of real property sold, and the credit and
18 reduction shall be applied at the time of the closing of the cotenant's purchase of the real
19 property. When jointly making the high bid or offer at the sale, two or more cotenants may receive
20 at the closing an aggregate credit and reduction in the amount of the total purchase price
21 representing the total of ~~such~~ those cotenants' undivided interests in the real property. Any
22 credits and reductions allowed by this subsection shall be further adjusted to reflect any
23 court-ordered adjustments to the ~~share(s)~~ share of the net sale proceeds of each of the cotenants
24 entering the high bid or offer, including, but not limited to, equitable adjustments to the ~~share(s)~~
25 share of the net sales proceeds due to a court finding of the lack of contribution of one or more

cotenants to the payment of ~~expenses carrying costs or improvements of the real~~
~~property.~~ property under G.S. 46A-26.

(d) ~~No clerk of the superior court shall appoint himself or his assistant or deputy to make~~
~~sale of any property in any proceeding before him. The clerk of the superior court shall not~~
~~appoint the clerk, the assistant clerk, or the deputy clerk to make a sale of the real property.~~

[Staff Note: This draft deviates from the Partition Sale/Clarify Number of Comm'rs Second
Draft, approved by the Commission, by making the highlighted changes: (i) clarifying that the
requirements of subsection (b) apply only to a public sale and not a private sale, (ii) changing
an "and" to an "or", (iii) using the term "allocating" to distinguish the term from an actual
partition, (iv) making a conforming change to the new carrying costs provision, approved by the
Commission, and (v) recodifying and amending language from G.S. 46-31.]

"§ 46A-101. Petition for revocation of confirmation order.

(a) Grounds for Revocation. – Notwithstanding ~~G.S. 46-28~~ G.S. 46A-100 or any other
provision of law, within 15 days of entry of the order confirming the partition sale ~~or~~ of real
property, any party to the partition proceeding or the purchaser may petition the court to revoke
its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the
property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be
conveyed.

(2) In the case of any party to the partition ~~proceeding~~ proceeding, any of the
following:

a. Notice of the partition was not served on the petitioner for revocation
as required by ~~Rule 4 of the Rules of Civil Procedure; or G.S. 1A-1,~~
Rule 4.

b. Notice of the sale was not mailed to the petitioner for revocation as
required by ~~G.S. 46-28(b); or G.S. 46A-100(b).~~

c. The amount bid or price offered is inadequate and inequitable and will
result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) Service; Notice of Hearing. – The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under ~~Rule 5 of G.S. 1A-1~~, Rule 5, and the officer or person designated to make ~~such the~~ sale in the manner provided for service of process in ~~Rule 4(j) of G.S. 1A-1~~. G.S. 1A-1, Rule 4(j). The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make ~~such a the sale sale~~, and all parties required to be served under ~~Rule 5 of G.S. 1A-1~~. G.S. 1A-1, Rule 5.

(c) Petition by Purchaser. – In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence ~~that~~ all of the following, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer:

(1) A lien remains unsatisfied on the property to be ~~conveyed; and~~ conveyed.

(2) The purchaser has not agreed in writing to assume the ~~lien; and~~ lien.

(3) The lien will not be satisfied out of the proceeds of the ~~sale; and~~ sale.

(4) The existence of the lien was not disclosed in the notice of sale of the ~~property,~~
~~the court may revoke the order confirming the sale, order the withdrawal of~~
~~the purchaser's offer, and order the return of any money or security to the~~
~~purchaser tendered pursuant to the offer.~~ property.

The order of the court in revoking an order of confirmation under this section ~~may~~ shall not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) Petition by Party. – In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that the petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

~~(d)~~(e) Petition Based on Inadequate Price. – In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the ~~appraiser~~ party or parties requesting the appraisal that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

~~(e)~~(f) Resale. – If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes.

~~(f)~~(g) Order Becoming Final; Appeal. – An order confirming the partition sale of real property becomes final and effective 15 days after entry of the order of confirmation or when the

clerk denies a petition for revocation, whichever occurs later. A party may appeal an order confirming the partition of sale of real property within 10 days of the order becoming final and effective.

[Staff Note: Regarding the highlighted part of this section, staff has received a report that in partition proceedings, appraisers are often paid several months after the appraisal; this practice can dissuade appraisers from participating in future partition proceedings.]

"§ 46A-102. ~~When bidder may purchase.~~ Purchase of property.

(a) After the order of confirmation becomes final and effective, the successful bidder may immediately purchase the property.

(b) The deed of the officer or person designated to make ~~such the~~ sale shall convey to the purchaser such title and estate in the property as the ~~tenants in common, or joint tenants, cotenants~~ and all other parties to the proceeding had ~~therein in the property.~~

(c) At the time that the order of confirmation becomes final, the court shall secure to each ~~tenant in common, or joint tenant, his~~ cotenant the cotenant's ratable share in severalty of the proceeds of sale.

"Article 3.

"Partition of Personal Property.

"§ 46A-150. Personal property may be ~~partitioned; commissioners appointed.~~ partitioned.

~~When any persons entitled as tenants in common, or joint tenants, of personal property desire to have a division of the same, they, or either of them, may file a petition in the superior court for that purpose; and the court, if it think the petitioners entitled to relief, shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within 20 days after notice of their appointment to divide such property as nearly equally as possible among the tenants in common, or joint tenants.~~ A tenant in common or joint tenant of personal property may petition to partition the property in superior court.

[Staff Note: Much of the language deleted in this section is carried forward in the next section.]

"§ 46A-151. ~~Report of commissioners.~~Commissioners appointed; report; confirmation;
impeachment.

(a) Appointment. – If the court determines that the petitioner is entitled to relief, the court shall appoint three disinterested commissioners, who, being first duly sworn, shall proceed within 20 days after notice of their appointment to partition the personal property in shares that are as nearly proportionate in value as possible to the interests of the cotenants.

(b) Report. – The commissioners shall ~~report their proceedings under the hands of any two of them, and shall file their report in the office of the clerk of the superior court within five days after the partition was made.~~file a written report of their proceedings in the court, signed by any two of them, within five days after the actual partition.

(c) Confirmation; Impeachment. – ~~If no exception to the report of the commissioners making partition is filed within 10 days the report shall be confirmed. Any party, after confirmation, shall be allowed to impeach the proceeding for mistake, fraud or collusion, by petition in the cause, but innocent purchasers for full value and without notice shall not be affected thereby.~~If no party files an exception to the commissioners' report within 10 days of its filing, the court shall confirm the report. After confirmation of the report, a party may by petition in the cause impeach the proceeding for mistake, fraud, or collusion. Impeachment, however, does not affect an innocent purchaser for full value and without notice.

[Staff Note: Some of the amendments in this section are taken from the Partition of Property Third Draft (DN 13-2 Partition of Property).]

"§ 46A-152. ~~Sale of personal property on partition.~~Partition sale of personal property.

~~If a division of personal property owned by any persons as tenants in common, or joint tenants, cannot be had without injury to some of the parties interested, and a sale thereof is deemed necessary, If the court determines that an actual partition of personal property would injure some of the interested parties and that a partition sale is necessary,~~the court shall order

a sale to be made as provided in Article 29A of Chapter 1 of the General Statutes. In a partition sale, the court is not required to appoint more than one commissioner."

SECTION 1.(c) This section becomes effective [October 1, 2019]. G.S. 46A-59, as enacted by subsection (b) of this section, applies to applications for orders for possession filed on or after that date. The rest of this section applies to partition proceedings commenced **on or** **after** that date.

[Staff Note: This draft deviates from the Partition Sale/Clarify Number of Comm'rs Second Draft, which was approved by the Commission, by not providing any retroactive application.]

PART II. CONFORMING CHANGES

[Staff Note: Staff will include these changes in a later draft.]

PART III. FURTHER TECHNICAL, CONFORMING, AND MODERNIZING AMENDMENTS TO THE ELECTIVE LIFE ESTATE STATUTE

[Staff Note: Staff will include these changes in a later draft.]

PART IV. EFFECTIVE DATE

SECTION 16. Except as otherwise provided, this act becomes effective [October 1, 2019].